raising of the height of the Hershberger cart to reduce the distance the user must bend over to load the cart to be an obvious expedient. The Examiner's position as to Claims 4-6 is that the alteration of the exact dimensions to meet the intended results of the invention are also obvious to a person of ordinary skill in the art.

Finally, the Examiner takes the position that Claim 10 is unpatentable over Hershberger in view of Wood. In this regard, while Hershberger does not disclose the support surface comprising a plurality of slats to hold the table edges, Wood does disclose a cart which utilizes a support surface having slats 14 formed thereon. The Examiner's position is that it would have been obvious to one of ordinary skill in the art to provide the Hershberger cart with the support surface of Wood.

The invention is different than the prior art

The present invention is directed to a cart construction that is so designed to facilitate the loading and unloading of heavy banquet tables thereon by a single operator. For this to occur bed height is critical. As stated in the specification the height of the bed must be at least ½ of the height of the table to be loaded. Otherwise, if the bed is too low, the operator will have to carry the weight of the table once it passes the point of equilibrium. The greater the distance, the more load the operator must carry. A single operator cannot load the subject tables onto the dollies of Hershberger. It takes two operators.

Further, an additional aspect of the invention is that the cart is easier to load if it can be manipulated to a position beneath the table. In order for this to occur, the cart must have a length (between the ends of the frame) such that it can be rolled beneath the banquet tables are they are erect.

The prior art simply does not teach the present invention

The Hershberger patent is not directed to a cart or dolly construction that facilitates the loading and unloading of heavy banquet tables by a single operator. Rather it is directed to a collapsible dolly system for tables that is compact and may be folded to occupy a minimum of

space. Toward this end it includes two separate dollies that may be unfolded and connected by a handlebar to form a table support. The Hershberger apparatus is intended to transport and store tables. That is as far as Hershberger goes however, Hershberger does not have a base frame and is not of a height greater than ½ the height of conventional folding banquet tables. The specification and the preamble of application claim 1 both identify that height to be in the range of 29-30 inches. Further, the Hershberger apparatus does not have a box frame of any kind with opposed side and end members. The dollies of Hershberger are definitely not equal to or greater than 15 inches high nor is there any recognition that the Hershberger dollies should be spaced together a distance less than 30 inches (for round tables).

The Pinto et al. patent shows little if anything that can be combined with Hershberger. The Pinto frame is not intended for use with any type of table, and it is not disclosed to be greater than 15 inches high. Further, with regard to Pinto it is not important as to whether the frame is greater than 15 inches high.

Claims 1 and 2 as amended are not anticipated by Hershberger

It is applicant's position that Claims 1 and 2, as originally filed were not anticipated by Hershberger. However, that question is now moot. The claims have been amended by specifically reciting that the frame has a height of greater than 15 inches (Claim 1) and a length of less than 45 inches (Claim 2). These limitations are simply not present in Hershberger. Therefore the rejection of Claims 1 and 2 must be withdrawn.

Amended Claims 1-9 are also not obvious in view of Hershberger as modified by Wood

In any rejection under 35 U.S.C. 103, the Federal Circuit (and the CCPA therebefore) have long held that it is the burden of the Patent Examiner to establish a prima facie case of obviousness when rejecting claims. In re Reuter, 651 F2nd, 751, 210 USPQ 249 (CCPA 1981). In attempting to apply the Examiner's rejection of Claims 1-9 (and also 10) as being unpatentable over Hershberger in view of Pinto et al. (or Wood), such rejection would fail to meet the burden in several respects.

First of all, where the claims differ from the reference, as is admitted by the Examiner, it repeatedly has been held by the Court of Appeals for the Federal Circuit that, absent some teaching, suggestion, or incentive supporting a combination of references, obviousness cannot be established. In re Geiger, 815 F2nd 686, 688, 2 USPQ 2nd 1276, 1278 (Federal Circuit 1987). This has been interpreted to mean that there must be reasonable intrinsic or extrinsic justification for the proposed modification or combination of references in order to properly reject the claim of an invention under 35 U.S.C. 103. Toward this end the Examiner is called upon to propose some logical reason apparent from the evidence of record that justifies his modification or combination. In re Regal, 188 USPQ 132, (CCPA, 1975). It is important in the instant situation to examine whether or not there exists such a reasonable intrinsic or extrinsic justification for modifying Hershberger with Pinto et al. The Examiner merely states, without support, that it would be obvious to modify the Hershberger cart by adding a box frame as taught by Pinto in order to raise the height of the cart and reduce the distance a user must bend over to load the cart.

The Examiner has completely misunderstood the invention. The frame is not elevated so that the operator does not have to bend over as far to load the cart. The frame is elevated to a position approximately at the point where the table is balanced or at equilibrium when tilted to reduce the weight the operator must lower or raise when loading and unloading the cart. Hershberger does not even hint or suggest the desirability of reducing the weight a user must lift or lower to load the cart by raising the bed height. This is taught by the invention, not by Hershberger. It is entirely improper to use the suggestion from the invention as being the suggestion of the primary reference.

Further, Hershberger definitely would not want to add a box frame to his dollies, because his desire was to break the frame apart to minimize the space necessary to store the cart when not in use. Thus the Hershberger reference teaches away from the Examiner's proposed combination. There is simply no suggestion at all in Hershberger of trying to reduce the work of the operator or to enable a single operator to load and unload the carts. On the other hand, that is the heart and soul of the present invention, and it is not recognized, suggested or even hinted at anywhere in the Examiner's prior art. The only teaching of this desire is in the application itself.

. The same argument is applicable to the other dimensional limitations introduced in Claims 4, 5, and 6. These dimensional limitations are introduced to make the carts applicable for various types of tables, and such results are not foreseen by Hershberger or any of the other prior art.

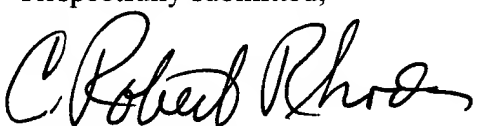
The same arguments apply to the Examiner's combination of Hershberger with Wood to meet Claim 10. It is simply inappropriate.

Even if the Examiner's combination of Hershberger with the other secondary references were appropriate, the combination would still not meet the language of Claims 1-10. The Pinto et al. frame does not disclose that it is at least 15 inches high or between 18 ½ and 20 inches high; or less than 30 inches between the ends (for circular tables). These are simply other limitations that would have to be suggested by the prior art, and they are not.

Conclusion

In view of the amendments and the arguments set forth hereinabove, it is applicant's position that the case is now in condition for allowance with Claims 1-10 and such action is accordingly requested.

Respectfully submitted,



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